

June 21, 1956

W. Grant McIntosh, Clerk
Merrimack County Commissioners
Court House
Concord, New Hampshire

SEP 22 1956

CONCORD, N.H.

Dear Mr. McIntosh:

Mr. Wyman has referred your letter of June 19, 1956, to me for reply.

I have made a rather intensive investigation of the subject, including communication by telephone with federal officials. These officers refer to section 443:5 of the Handbook for State OASI Administrators, with which, I believe, you are familiar and which reads as follows:

"Fees.--Fees paid to employees as remuneration for services performed in connection with their employment are wages. This is so even though the fees are paid to the employees by third parties, i.e., by members of the public, rather than the State or local government unit for which the employee works. Of course, if a State, political subdivision, or coverage group has excluded services in a position which is compensated on a fee basis, an employee in such a position would not be covered under the agreement."

It is indisputable that the people discussed in your letter come squarely within the language quoted. The federal authorities advise us that they believe this directive to rest on firm legal foundations in the federal statutes, and that the State will be held to compliance with it. For our part, then, we have no alternative but to follow federal instructions and to request that the political subdivisions make reports and contributions in accordance therewith.

June 21, 1936

This office is fully aware of the practical difficulties county commissioners face with respect to registers of deeds whose compensation consists solely of fees paid to them by third persons and for which they need not account to the county. We recognize, too, that if the matter had not already been otherwise decided by the federal officials as appears in the excerpt quoted above, one might with some logic argue

(a) that in the act of receiving their fees registers are not acting as employees of the county and

(b) that an employer should be liable only for compensation paid by him.

However we do not regard the matter to be an open one, and can simply repeat the suggestion of the federal officials that some suitable arrangement be worked out between the Commissioners and the Register so that the liabilities of each can be ascertained and compliance had with the federal directive.

Deputy sheriffs, in my opinion, stand in the same position in relation with the county as does the Register of Deeds. Their position is not analogous to that of the Register's employees for the reason that deputy sheriffs upon appointment are statutory officers in their own right (RSA 104:3), a status not enjoyed by the personal employees of the Register. The same type of mutually satisfactory arrangement therefore ought to be worked out between the Commissioners and the Deputy Sheriffs as in the case of the Register.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml

cc: James J. Barry, Commissioner
Department of Public Welfare